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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/770,931	01/26/2001	John H. Schneider	00.05.12.1	8223

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EXAMINER

YU, GINA C

ART UNIT PAPER NUMBER

1617

DATE MAILED: 12/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	<b>Application No.</b> 09/770,931	<b>Applicant(s)</b> SCHNEIDER ET AL.	
	<b>Examiner</b> Gina C. Yu	<b>Art Unit</b> 1617	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 10 November 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See continuation sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 16-28,30,34 and 35.

Claim(s) withdrawn from consideration: 29, 32, 33.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s): \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

  
**SREENI PADMANABHAN**  
**SUPERVISORY PATENT EXAMINER**

12/9/03

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Continuation from No. 5:

It is noted that, on the September 23, 2003 Office action, examiner inadvertently misstated the date of the May 11, 2003 Office action to which the presently active rejection refers. No rejection in the May 11, 2003 Office action has been withdrawn, as it was clearly manifested in the rejection statement that the claim rejection made under 35 U.S.C. § 103 (a) over Mitchell (US 5741433) in view of Vijayendran et al. (US 5173526) is maintained for the reasons of record.

Examiner believes the main issue in this case is whether using the Vijayendran polymer for a controlled release coating material would have been obvious to a skilled artisan at the time of the present invention. Examiner takes the position it would have been obvious because, as indicated in the September 23, 2003 Office action, Mitchell clearly indicates that it is well known in the art that a polymeric coating material having good moisture barrier function is still desirable and used for constant controlled release of the core material in a capsule. See Mitchell, col. 5, line 63-col. 6, line 2.

Examiner had pointed out that Vijayendran teaches that the vinyl/polyurethane polymer is used because it meets the balance between good barrier function and flexibility. Applicants in response assert that the teaching should not be interpreted to mean that the patentee intentionally manipulated the polymer to place defects in the coating. It is acknowledged that neither Vijayendran nor applicants modifies or alters the vinyl/polyurethane polymer.

Both use the same polymer. It cannot be said that same vinyl/polyurethane polymer produces different results.

Examiner is not convinced that, in view of the collective teachings of Mitchell and Vijayendran, a skilled artisan would have found using the Vijayendran vinyl/polyurethane polymer as a controlled releasing coating material would have been nonobvious.

Applicants' argument that Mitchell pellets are larger than the claimed invention is erroneous because the range of the diameters of the prior art pellets (0.0313-3 inches) meets the claimed range (0.0097-0.078 inches). While applicants also assert that the size of the core material is not taught in the references, examiner notes that Mitchell teaches the weight percent of the coating material should be from 1-40 % based on the total weight of the controlled-release pellets. See col. 6, lines 27 – 41. In response, examiner notes that it is well settled in patent law that "it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom." See In re Preda, 401 F.2d 825, 826, 159 U.S.P.Q. 342, 344 (CCPA 1968). In this case, given the size and weights of the pellets in Mitchell, and the type of the coating materials in Mitchell and Vijayendran, examiner views that the amount of the core material to be used should have been obvious to the skilled artisan.

In response to applicants' general arguments that Mitchell and Vijayendran do not teach the instant invention, which also had been presented in

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the July 11, 2003 response, examiner reiterates that the presently active rejection is made in view of the collective teachings of the references. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); In re Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 703-308-3951. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 703-305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Gina Yu  
Patent Examiner

